

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Craig Cunningham,

Plaintiff,

—v—

On Deck Capital, Inc., et al.,

Defendants.

20-cv-10621 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

On February 26, 2021, Defendants filed a motion to dismiss the Complaint and the Amended Complaint pursuant to Rule 12(b) of the Federal Rules of Civil Procedure. Dkt. No. 5. It is hereby ORDERED that if Plaintiff intends to file an amended complaint, he shall do so by **April 2, 2021**. Plaintiff is hereby advised that any amended complaint will completely replace the original complaint. Accordingly, if Plaintiff files an amended complaint, he should include all of the information he believes is necessary to make a short, plain statement explaining why he entitled to relief against the Defendants. Plaintiff is on notice that declining to amend his pleadings to timely respond to a fully briefed argument in the Defendants' February 26, 2021 motion to dismiss may well constitute a waiver of the Plaintiff's right to use the amendment process to cure any defects that have been made apparent by the Defendants' briefing. *See Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC.*, 797 F.3d 160, 190 (2d Cir. 2015) (leaving "unaltered the grounds on which denial of leave to amend has long been held proper, such as undue delay, bad faith, dilatory motive, and futility.").

If Plaintiff chooses to amend, the Defendant may then (a) file an answer; (b) file a new motion to dismiss; or (c) submit a letter stating that it intends to rely on the initially filed motion to dismiss.

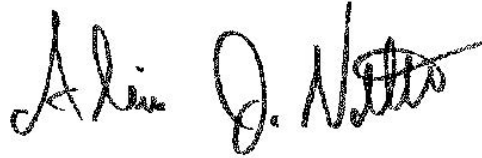
IT IS FURTHER ORDERED that if no amended complaint is filed, Plaintiff shall serve his opposition to the Defendant's motion to dismiss by **April 2, 2021**. The Defendant's reply, if any, shall be served by **April 16, 2021**.

IT IS FURTHER ORDERED that either party may request an extension of the briefing schedule for the motion. A deadline will be extended if the party demonstrates that its pursuit of the action has been diligent and that there is a good reason for extending the deadline.

The Clerk of Court is respectfully directed to mail a copy of this Order to the Plaintiff.

SO ORDERED.

Dated: March 2, 2021
New York, New York

A handwritten signature in black ink, appearing to read "Alison J. Nathan", written in a cursive style.

ALISON J. NATHAN
United States District Judge